

Comptroller of the Currency, Treasury

§ 5.35

Instructions for Preparation of Report of Changes in Organizational Structure, Form FR Y-10, a copy of which is set forth on the OCC's Web site at <http://www.occ.gov>. If the operating subsidiary is engaged in an activity not set forth in this list, a national bank shall report the code 0000 and provide a brief description of the activity.

(iii) *Filing time frames and availability of information.* Each national bank's Annual Report on Operating Subsidiaries shall contain information current as of December 31st for the year prior to the year the report is filed. The national bank shall submit its first Annual Report on Operating Subsidiaries (for information as of December 31, 2004) to the OCC on or before January 31, 2005, and on or before January 31st each year thereafter. The national bank may submit the Annual Report on Operating Subsidiaries electronically or in another format prescribed by the OCC. The OCC will make available to the public the information contained in the Annual Report on Operating Subsidiaries on its Web site at <http://www.occ.gov>.

[65 FR 12911, Mar. 10, 2000, as amended at 66 FR 49097, Sept. 26, 2001; 66 FR 62914, Dec. 4, 2001; 68 FR 70131, Dec. 17, 2003; 69 FR 64481, Nov. 5, 2004]

§ 5.35 Bank service companies.

(a) *Authority.* 12 U.S.C. 93a and 1861-1867.

(b) *Licensing requirements.* Except where otherwise provided, a national bank shall submit a notice and obtain prior OCC approval to invest in the equity of a bank service company or to perform new activities in an existing bank service company.

(c) *Scope.* This section describes the procedures and requirements regarding OCC review and approval of a notice to invest in a bank service company.

(d) *Definitions*—(1) *Bank service company* means a corporation or limited liability company organized to provide services authorized by the Bank Service Company Act, 12 U.S.C. 1861 *et seq.*, all of whose capital stock is owned by one or more insured banks in the case of a corporation, or all of the members of which are one or more insured banks in the case of a limited liability company.

(2) *Limited liability company* means any non-corporate company, partnership, trust, or similar business entity organized under the law of a State (as defined in section 3 of the Federal Deposit Insurance Act) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company.

(3) *Depository institution*, for purposes of this section, means an insured bank, a financial institution subject to examination by the Office of Thrift Supervision, or the National Credit Union Administration Board, or a financial institution whose accounts or deposits are insured or guaranteed under state law and eligible to be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.

(4) *Invest* includes making any advance of funds to a bank service company, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered before the payment was made.

(5) *Principal investor* means the insured bank that has the largest amount invested in the equity of a bank service company. In any case where two or more insured banks have equal amounts invested, the bank service company shall designate one of the banks as its principal investor.

(e) *Standards and requirements.* A national bank may invest in a bank service company that conducts activities described in paragraphs (f)(3) and (f)(4) of this section, and activities (other than taking deposits) permissible for the national bank and other state and national bank shareholders or members in the bank service company.

(f) *Procedures*—(1) *OCC notice and approval required.* Except as provided in paragraphs (f)(2) and (f)(4) of this section, a national bank that intends to make an investment in a bank service company, or to perform new activities in an existing bank service company, must submit a notice to and receive prior approval from the OCC. The OCC approves or denies a proposed investment within 60 days after the filing is

received by the OCC, unless the OCC notifies the bank prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue. The notice must include the information required by paragraph (g) of this section.

(2) *Notice process only for certain activities.* A national bank that is “well capitalized” and “well managed” as defined in § 5.34(d) may invest in a bank service company, or perform a new activity in an existing bank service company, by providing the appropriate district office written notice within 10 days after the investment, if the bank service company engages only in the activities listed in § 5.34(e)(5)(v). No prior OCC approval is required. The written notice must include a complete description of the bank’s investment in the bank service company and of the activity conducted and a representation and undertaking that the activity will be conducted in accordance with OCC guidance. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. Any bank receiving approval under this paragraph is deemed to have agreed that the bank service company will conduct the activity in a manner consistent with the published OCC guidance.

(3) *Investments requiring no approval.* A national bank does not need OCC approval to invest in a bank service company, or to perform a new activity in an existing bank service company, if the bank service company will provide the following services only for depository institutions: check and deposit posting and sorting; computation and posting of interest and other credits and charges; preparation and mailing of checks, statements, notices, and similar items; or any other clerical, bookkeeping, accounting, statistical, or similar function.

(4) *Federal Reserve approval.* A national bank also may, with the approval of the Board of Governors of the Federal Reserve System (Federal Reserve Board), invest in the equity of a bank service company that provides any other service (except deposit taking) that the Federal Reserve Board has determined, by regulation, to be permissible for a bank holding company under 12 U.S.C. 1843(c)(8).

(5) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to a request for approval to invest in a bank service corporation. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(g) *Required information.* A notice required under paragraph (f)(1), of this section must contain the following:

(1) The name and location of the bank service company;

(2) A complete description of the activities the bank service company will conduct. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(3) Information demonstrating that the bank will comply with the investment limitations of paragraph (i) of this section;

(4) Information demonstrating that the bank service company and all banks investing in the bank service company are located in the same state, unless the Federal Reserve Board has approved an exception to this requirement under the authority of 12 U.S.C. 1864(b); and

(5) Information demonstrating that the bank service company will conduct these activities only at locations in a state where the investing bank could be authorized to perform the activities directly.

(h) *Examination and supervision.* Each bank service company in which a national bank is the principal investor is subject to examination and supervision by the OCC in the same manner and to the same extent as that national bank. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(i) *Investment and other limitations—(1) Investment limitations.* A bank may not invest more than ten percent of its capital and surplus in a bank service company. In addition, the bank's total investments in all bank service companies may not exceed five percent of the bank's total assets.

(2) *Other limitations.* Except as provided in paragraph (f)(4) of this section, a bank service company shall only conduct activities that the national bank could conduct directly. If the bank service company has both national and state bank shareholders or members, the activities conducted must also be permissible for the state bank shareholders or members.

[61 FR 60363, Nov. 27, 1996, as amended at 64 FR 60098, Nov. 4, 1999; 65 FR 12913, Mar. 10, 2000]

§ 5.36 Other equity investments.

(a) *Authority.* 12 U.S.C. 1 *et seq.*, 24(Seventh), and 93a.

(b) *Scope.* National banks are permitted to make various types of equity investments pursuant to 12 U.S.C. 24(Seventh) and other statutes. These investments are in addition to those subject to §§ 5.34, 5.35, and 5.37. This section describes the procedure governing the filing of the notice that the OCC requires in connection with certain of these investments. Other investments authorized under this section may be reviewed on a case-by-case basis by the OCC.

(c) *Definitions.* For purposes of this § 5.36:

(1) *Enterprise* means any corporation, limited liability company, partnership, trust, or similar business entity.

(2) *Well capitalized* means the capital level described in 12 CFR 6.4(b)(1).

(3) *Well managed* has the meaning set forth in § 5.34(d)(3).

(d) *Procedure.* (1) A national bank must provide the appropriate district office with written notice within ten days after making an equity investment in the following:

(i) An agricultural credit corporation;

(ii) A savings association eligible to be acquired under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823); and

(iii) Any other equity investment that may be authorized by statute after February 12, 1990, if not covered by other applicable OCC regulation.

(2) The written notice required by paragraph (c)(1) of this section must include a description, and the amount, of the bank's investment.

(3) The OCC reserves the right to require additional information as necessary.

(e) *Non-controlling investments.* A national bank may make a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in the activities described in paragraph (e)(2) of this section by filing a written notice. The written notice must be filed with the appropriate district office no later than 10 days after making the investment and must:

(1) Describe the structure of the investment and the activity or activities conducted by the enterprise in which the bank is investing. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(2) State which paragraphs of § 5.34(e)(5)(v) describe the activity or activities, or state that, and describe how, the activity is substantively the same as that contained in published OCC precedent approving a non-controlling investment by a national bank or its operating subsidiary, state that